IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. D.B. CRIMINAL JAIL APPEAL NO. 468/1987
(SHIV LAL VS STATE)
2. D.B. CRIMINAL APPEAL NO. 480/1987
(SHIVLAL VS. STATE)

J U D G M E N T

APPEALS UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 31.10.1987 PASSED BY THE LEARNED SESSIONS JUDGE, BIKANER IN SESSIONS CASE NO. 106/1986

DATE OF JUDGMENT : 26th September, 2007

HON'BLE MR. BHAGWATI PRASAD, J.
HON'BLE MR. MUNISHWAR NATH BHANDARI, J.

Mr. Sandeep Mehta for the appellant.
Mr. JPS Choudhary for the State.

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BY THE COURT :

The present appeal has been filed by the accused appellant Shiv Lal against the decision of the court of Sessions Judge, Bikaner in Sessions Case No. 106/86 dated 31.10.1987.

The prosecution was initiate on the basis of a report lodged by Khuma Ram on 27.07.86 at about 9 AM alleging inter alia that at about 9 PM in the night on 26.07.86, accused Shiv lal has inflicted injuries on person of Ram

Rakh and killed him. The sequence of incident as reported in the First Information Report by the first informant is that when he was at his house, at about 10 PM, Hukma Ram, Hari Ram came to him and informed him that about 9 pm., while Hukma Ram was carrying milk on camel cart to village Surpura, at that time, Ram Rakh was also to accompany him because his milk was also being carried but he did not accompany him and stated that he is going to the house of Sugna Ram and after visiting Sugna Ram, he will meet him at the junction at Koja Ram's field. Hari Ram also joined Hukma Ram. When they reached at the corner of field of Koja Ram, they heard cries which appeared to them of Ram Rakh. When they reached to the spot they saw that Ram Rakh was lying on the ground bloodstained and was in a precarious condition. Koja Ram and Shiv lal standing on the field with Kassia ran away from the field. The deceased informed him that he was inflicted injuries by Shiv lal and thereafter, the accused died. The reason for this incident was that 2-3 days back, cattle of Ram Rakh entered in to the field of Shiv lal and had a dispute in between them.

On the basis of such report, the police registered a case under Section 302 IPC being FIR No. 191/86. The investigation was conducted and after investigation, charge-sheet was filed and case was committed to the court of Sessions for trial. The trial court framed charges under Section 302 IPC against the accused. The accused denied the charges and claimed trial. At the trial, prosecution examined 11 witnesses. The accused was examined under Section 313 Cr.P.C. No defence witness was produced by the accused.

The trial court after considering the case of the prosecution, came to the conclusion that the death of the deceased Ram Rakh was due to brain injury and it was a case of homicide. The trial court also observed that there was no chemical examination of the recovery of weapons and there was no corroborative piece of evidence available on record. The trial court after discussing the testimony of the eye-witnesses came to the conclusion that it was the accused who had caused the injury to the deceased and therefore, he is guilty of the offence under Section 302 IPC and consequently, he was sentenced to life imprisonment and a fine of Rs. 250/-.

Learned counsel for the appellant urged that it is not a case where eye-witnesses can be believed to have seen the incident. According to the prosecution, the incident is said to have taken place at about 9 PM. Interestingly, PW/2 Sugna Ram who was the witness to whom the deceased is said to have gone to meet stated that the deceased came to him at about 10 PM. If the deceased had gone to see the Sugna Ram then his arrival at the field of Koja Ram would be past 10 PM. PW/3 Hukma Ram in whose camel cart the deceased put his milk says that he was going to Surpura at about 8-8:30 pm and at that time, the deceased told him that he is going to Sugna Ram and then he would meet them at the field of Koja Ram. This witness alongwith another witness PW/4 Hari Ram states that they were going to Surpura to sell milk and at about 8:30 – 9 pm, deceased had met them. If the statement of witnesses PW/3 Hukma and PW/4 Hari Ram is taken into consideration, then by 10 pm the whole incident was over and if at about 10

pm, the deceased was with Sugna Ram as has been stated by him, then by that time, the incident had not taken place. This time factor assumes importance in the background where the first information report gives the time of incident as 9 PM which was lodged after 12 hours of the incident i.e. 9 AM. Thus, the eye-witnesses are not the witnesses of occurence because time factor goes against their presence at the field of Koja Ram. The reason for these two witnesses PW/3 Hukma Ram and PW/4 Hari Ram being approached by the deceased was that they were going to sell milk. PW/4 Hari Ram has admitted that he had no milk to sell and he was only going to his field. Thus, the very reason of Hari Ram being with Hukma Ram falls to ground and therefore, the witnesses are trying to make up a story which was not correct. Further what is starking in the statement of PW/4 Hari Ram is that he has stated in his statement that the accused had inflicted one blow on the head of Ram Rakh in his presence. But such was not the statement of this witness in the police statement Ex.D/2. Thus, there is a clear improvement in the statement of this witness. This improvement goes to the root of the matter.

Another aspect assailed by the learned counsel for the accused is that the incident had taken place at about 9 PM in the night. Admittedly, the witnesses had camel cart with them. They did not go to the police to intimate. PW/5 Khuma Ram is said to have gone to the police station. He in his examination-in-chief has stated that he has reported the matter to the police next morning at about 9. Then he goes to explain as to why he did not go in the night because there was no conveyance available. Interestingly, the witnesses who have seen the incident had

a camel cart with them and in the rural areas, it is not the mechanised vehicle which is the prime source of travelling. Camel cart is a reasonable and good source of commuting and therefore, the delay in lodging the first information report assumed importance. This delay assumes further importance when the mother of the deceased is informed about the incident in the morning at about 9 AM that too, when the witnesses who alleged tht they have seen the incident were of the same village.

Learned trial court has brushed aside this aspect by saying that this was not an information of a happy incident which could have been communicated in the night. Learned counsel for the appellants submits that good informations can wait from being communicated, but the information regarding the death, though not a very pleasant information, is an information which is communicated may be with a heavy heart forthwith. The delay in information to the police coupled with the delay in informing the mother and brother of the deceased show that witnesses were not present on the scene of occurrence as alleged by them.

Interestingly, the eye witnesses have tried to create a dying declaration by putting words in the mouth of the deceased that he has been killed by Shiv lal. If the two eye-witnesses PW/3 Hukma Ram and PW/4 Hari Ram have seen the occurrence, then there was no occasion for the deceased to have told about the incident. Further doctor has clearly opined that the nature of the injuries suggests that the deceased would have gone in a state of Coma in 4-5 minutes. The number of injuries are only two. The brain matter is coming out and in the

presence of such injuries, it is rather impossible to conceive that any dying declaration could be made by the deceased. Thus, the prosecution faced with the difficulty that the presence of the witnesses may be treated doubtful, created a dying declaration and such introduction of piece of evidence is enough to brand the prosecution as a scheming prosecution and this prosecution stands condemned.

There is no corroboration available. There are irreconcilable inconsistencies in the statement of the witnesses. The statement of the eye-witnesses is that they were going to sell the milk whereas, Hari Ram has stated that he had no milk to sell. Thus, the eye-witnesses' testimony deserves to be thrown over board. Except that the testimony of the eye-witnesses, there is no other piece of evidence available on record. The eye-witnesses are tainted witnesses. Their testimony is full of falsehoods and their conduct indicate that they were not present on the scene of occurrence. Time frame also goes against their presence on the scene of occurrence. Therefore, the prosecution was without any legs and deserves to be discarded in its entirety and the case as made out deserves to be dismissed.

Per contra, learned Public Prosecutor submitted that it is a case supported by two eye-witnesses. The eye-witnesses have supported the prosecution case. They have clearly stated the fact of assault and in this background, it would not be proper to discard their testimony and in that background, the findings of the trial court deserves to be supported and the appeal deserves to be dismissed.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the facts and circumstances of the case. The reason of the eye-witnesses being present on the scene of occurrence was to the effect that they were going to sell the milk. Hari Ram has clearly stated that he had no milk to sell. No purchaser of milk was investigated and therefore, the reason of the eye-witnesses being in the vicinity of the place of incident being subject to doubt, it shows that the witnesses are telling lies. Next aspect is lodging of the First Information Report in the morning at 9 AM indicating that the fact of incident was not known to the witnesses at the time they claim. Having known in the morning, they have tried to re-construct the story. The eye-witnesses have been made up because according to the eye-witnesses, the incident had taken place at around 9 PM. The trial court has further stretched this from 9 PM to the period when there was light so as to give a chance to these witnesses to see the incident because they were at a distance and defence argued that they could not have seen the assailant. Time has been fixed by PW/2 Sugna Ram by saying at about 10 PM, the deceased had come to him to say about ploughing of the field. All this indicate that the prosecution was not sure about its case. The statement of PW/2 Sugna Ram about the presence of the deceased at about 10 PM has gone un-challenged. Therefore, according to this witness, the incident had not taken place prior to 10 pm and if the incident had taken place past 10 pm, then both the eye-witnesses are false.

The camel cart being with them, they should have informed the police that night only. In any case, they returned back to their field and not

informed the family of the deceased. This is a factor which cannot go un-noticed. The mother has been informed after sunrise. This is a fact which knocks out the bottom of the case. If the family of the deceased had known about the incident at about 9 AM., the police had also known about the incident at 9 AM. The only inference which can be drawn is that the prosecution witnesses were not known of the facts and the whole story has been cooked up. There being no independent corroboration of the eye-witnesses, it is not safe to rely on them because they do no fall in the category of witnesses who can be said to be wholly reliable. Even they are hard to be christened as partly reliable witnesses. They are wholly un-reliable witnesses and we feel that the prosecution has not been able to bring home the charges against the accused appellants.

In the background of the aforesaid discussion, we are persuaded that the prosecution has failed to bring home the charges against the accued persons. The case has not been established beyond doubt and the same therefore, deserves to be discarded.

The appeal is accordingly allowed. The conviction and sentence awarded to the accused appellant is set aside. The accused is on bail. He need not surrender to his bail bonds. His bail bonds are cancelled.

(MUNISHWAR NATH BHANDARI), J. (BHAGWATI PRASAD), J.

bjsh